Supreme Court, U.S.
FILED

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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1995

KAREN McCRACKEN,

Petitioner,

v.

COSHOCTON COUNTY and DAVID CORBETT,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

By ignoring evidence contained in the Petitioner's Affidavit demonstrating that the Respondents were deliberately indifferent to Petitioner's serious medical needs when they delayed her medical treatment until after she testified before a Grand Jury, and instead relying solely on evidence contained in the individual Respondent's Affidavit, did the lower courts violate Rule 56 of the Federal Rules of Civil Procedure by granting summary judgment in favor of the Respondents?

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No. _____

IN THE

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October Term, 1995

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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Petitioner Karen McCracken respectfully requests that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered in the above entitled case on April 17, 1996.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit, review of which is sought by this petition, is unpublished and is reprinted in the

appendix of this petition at page A-1. The opinion of the United States District Court for the Southern District of Ohio is unpublished and is reprinted in the appendix at page A-4.

JURISDICTION

Judgment of the United States Court of Appeals for the Sixth Circuit was entered on April 17, 1996. This Court's jurisdiction to consider this petition from the final judgment of the Sixth Circuit is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

United States Code, 42 U.S.C. § 1983:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

RULE OF CIVIL PROCEDURE INVOLVED

Federal Rules of Civil Procedure, Rule 56:

(c) Motion and Proceedings Thereon.

> ... The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. . . .
>
> (e) Form of Affidavits; Further Testimony; Defense Required.
> ... When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. . . .

STATEMENT OF THE CASE

On or about December 20, 1992, Petitioner Karen McCracken was arrested for carrying a loaded weapon in a motor vehicle. *See* District Court Opinion, Appendix at A-4. As a result of her arrest, Petitioner received a five-day sentence to be served in the Coshocton County Jail beginning on Monday, February 8, 1993. *Id.* at A-8.

Petitioner suffers from a medical condition known as Crohn's disease. *Id.* at A-4. The symptoms of Crohn's disease include severe cramping and diarrhea, which, if not properly treated, will result in dehydration. *Id.* Petitioner began to suffer a flare-up of her condition shortly before she entered the jail to begin serving her sentence. *Id.* at A-8. Indeed, two days into her

sentence, Petitioner had become so ill that it was necessary for a Coshocton County Jail officer to take her to the emergency room at Coshocton County Memorial Hospital. *Id.*

After being returned to the Coshocton County Jail, Petitioner called her mother and asked her to call Dr. Carver, the personal physician who was treating Petitioner's Crohn's disease. *Id.* Dr. Carver agreed that Petitioner needed intravenous (IV) treatments to combat her dehydration and he arranged for her to be treated at Bethesda Memorial Hospital in Zanesville, Ohio. *Id.* However, the Petitioner "was not allowed to go and receive the treatments until after [she] testified in front of the Grand Jury on February 12." *See* Affidavit of Karen McCracken, Record at 68;[1] District Court Opinion, Appendix at A-9.

By the time she testified on February 12, Petitioner "was very weak, dehydrated, and needed help standing and walking." *See* District Court Opinion, Appendix at A-8 and A-9. After Petitioner testified in front of the Grand Jury, she was allowed by the Coshocton County Jail officials to go to Bethesda in order to receive the IV treatments. *Id.* at A-9. The Bethesda Emergency Room Report noted that Petitioner was suffering from cramping pain, had diarrhea four times a day, had eaten only a couple of crackers and had lost some weight. *See* Record at 70. Petitioner was diagnosed with an "acute exacerbation" of her Crohn's disease, and the Report stated that "it was clear that the patient was sick." *Id.* at 70-71.

On September 30, 1994, Petitioner filed suit under 42 U.S.C. § 1983 against the Respondents in the United States District Court for the Southern District of

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[1] All Record references are to the "Copy of District Court Record," which was filed by the Petitioner in the United States Court of Appeals for the Sixth Circuit and is referred to here as "Record at __."

Ohio, invoking the federal question jurisdiction provided for in 28 U.S.C. § 1331. *Id.* at 1. The Court of Appeals affirmed the District Court's decision granting summary judgment in favor of the Respondents based on the conclusion that the Petitioner failed to establish evidence that the Respondents were deliberately indifferent to Petitioner's serious medical needs or that the Respondents had deliberately delayed the Petitioner's medical treatment. *See* Opinions, Appendix at A-1 and A-4. The District Court referred to the Petitioner's sworn affidavit, in which she stated her belief that she was not allowed to go to Bethesda Memorial Hospital and receive IV treatments until after she testified in front of the Grand Jury, as an "allegation about a delay in treatment." *See* District Court Opinion, Appendix at A-9. Further, while rejecting the Petitioner's affidavit as a mere allegation, the District Court relied solely on the sworn affidavit of Respondent David Corbett, in which he simply stated his belief that he could find no evidence of such a delay. *Id.*

REASONS FOR GRANTING THIS PETITION FOR CERTIORARI

The United States Court of Appeals for the Sixth Circuit erred in affirming the District Court's decision to grant summary judgment in favor of the Respondents. Despite the standards set forth in Rule 56 of the Federal Rules of Civil Procedure, the District Court ignored evidence contained in the Petitioner's Affidavit demonstrating that the Respondents were deliberately indifferent to Petitioner's serious medical needs when they delayed her medical treatment until after she testified before a Grand Jury, and instead relied solely on evidence contained in the individual Respondent's Affidavit. Therefore, the Sixth Circuit has sanctioned a departure from the accepted and usual course of judicial

proceedings by the lower court so as to call for an exercise of this Court's supervisory power. As a consequence, the Petitioner respectfully contends that this petition should be granted or, alternatively, that the decision below should be summarily reversed.

There was no dispute in the lower courts that prison officials violate a prisoner's Due Process and Eighth Amendment rights under 42 U.S.C. § 1983 by intentionally delaying medical treatment out of a deliberate indifference to a prisoner's serious medical needs. *See* Opinions, Appendix at A-2 and A-10; *Estelle v. Gamble,* 429 U.S. 97, 104-05 (1976). The only dispute in the lower courts was whether the record evidence demonstrated that the Respondents deliberately delayed the Petitioner's medical treatment such that the Respondents' motion for summary judgment should have been denied.

Rule 56 of the Federal Rules of Civil Procedure states that summary judgment should be granted only if the record evidence, including affidavits, "show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P., Rule 56(c). Indeed, when confronted with a motion for summary judgment, the nonmoving party must produce record evidence, including affidavits, which "set[s] forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P., Rule 56(e). In interpreting Rule 56, this Court has stated that summary judgment will not lie if the dispute about a material fact is genuine, "that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248 (1986). Further, this Court has held that the moving party bears the "burden of showing the absence of a genuine issue as to any material fact, and for these purposes, the [evidence

submitted] must be viewed in the light most favorable to the opposing party." *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970) (footnote omitted); *see also United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962). Therefore, the question before the lower courts was whether, under these standards, there was a genuine issue of material fact that the Respondents were deliberately indifferent to the Petitioner's serious medical needs when they delayed her medical treatment until after she testified before a Grand Jury.

After Petitioner's return from her first trip to the emergency room, Dr. Carver arranged for her to be given IV treatments at Bethesda Memorial Hospital to combat her dehydration. *See* District Court Opinion, Appendix at A-8. Because the Petitioner did not allege that Dr. Carver had notified the Respondents of the need for the IV treatments, the District Court held that the Respondents did not have knowledge of the Petitioner's serious medical needs. *Id.* at A-10. However, there was ample record evidence illustrating the degree of the Petitioner's illness on Friday, February 12, such that a reasonable jury could conclude that the Respondents had knowledge of the Petitioner's medical needs. According to the District Court opinion, by the time she testified, Petitioner "was very weak, dehydrated, and needed help standing and walking." *Id.* at A-8 and A-9. Further, according to the Bethesda Emergency Room Report, "it was clear that the patient was sick," as the Petitioner had cramping pain and diarrhea four times a day, had eaten only a couple of crackers and had lost some weight. *See* Record at 70.[2] Based on this evidence, under the standards discussed above, the lower courts should have concluded that a

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[2] Mysteriously, the District Court cited language from this report for the position that the Petitioner did not appear ill at the time of her admission. *See* District Court Opinion, Appendix at A-10. However, given the language from this report quoted above, this ambiguity should have been resolved in favor of the Petitioner on a motion for summary judgment.

reasonable jury could believe that the Respondents had knowledge of the Petitioner's serious medical needs before she was scheduled to testify in front of the Grand Jury.

Against the background of this evidence of the Respondents' knowledge of the Petitioner's serious medical needs, the Petitioner submitted a sworn affidavit stating her belief that the Respondents deliberately delayed her treatment in that she "was not allowed to go and receive the treatments until after [she] testified in front of the Grand Jury on February 12." *See* Affidavit of Karen McCracken, Record at 68. In response, the Respondents submitted the sworn affidavit of Respondent David Corbett, in which he stated his belief that he could find no evidence of such a delay. *See* District Court Opinion, Appendix at A-9. Despite the inherent equality of two opposing parties stating their beliefs, the District Court considered the Petitioner's Affidavit to be merely "an allegation," and then proceeded to rely solely upon the Respondent's Affidavit for the conclusion that there was no evidence of a deliberate delay. *Id.* However, under the standards discussed above, the lower courts should have concluded that a reasonable jury could believe the Petitioner's testimony instead of the Respondent's testimony, and should have denied the Respondents' motion for summary judgment.

It is important for this Court to review the lower courts' opinions in this case in order to remind those courts as to the proper burden that must be met by a party moving for a summary judgment. Further, review is particularly important because this Court is the Petitioner's last chance to have her claims heard by a jury of her fellow citizens.

CONCLUSION

For all of the reasons stated herein, the Petitioner respectfully contends that the Sixth Circuit has sanctioned a departure from the accepted and usual course of judicial proceedings by the lower court so as to call for an exercise of this Court's supervisory power. As a consequence, the Petitioner respectfully contends that this petition should be granted or, alternatively, that the decision below should be summarily reversed.

Respectfully Submitted,

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APPENDIX

No. 95-4029

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

KAREN McCRACKEN,
Plaintiff-Appellant,

v.

COSHOCTON COUNTY; DAVID CORBETT, Sheriff
Defendants-Appellees.

Decided and Filed April 17, 1996

Before: MERRITT, Chief Judge; MILBURN, Circuit Judge, and ZATKOFF, District Judge.*

Karen McCracken, through counsel, appeals a district court order granting summary judgment in favor of the defendants in this civil rights suit filed under 42 U.S.C. § 1983. The parties have expressly waived oral argument and this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Seeking injunctive and monetary relief, McCracken sued Coshocton County, Ohio, and the sheriff of the Coshocton County Jail in his individual and official capacities. McCracken claimed that these defendants denied her due process under the Fifth and Fourteenth Amendments, and subjected her to cruel and unusual punishment in violation of her Eighth Amendment rights, when they delayed medical

* The Honorable Lawrence P. Zatkoff, United States District Judge for the Eastern District of Michigan, sitting by designation.

treatment during her incarceration at the Coshocton County Jail in February of 1993. Upon consideration of the defendants' motion for summary judgment, the district court granted the motion and dismissed the complaint. On appeal, McCracken reasserts her claims presented in the district court.

On appeal, this court reviews a grant of summary judgment de novo. *Moore v. Philip Morris Cos.,* 8 F.3d 335, 339 (6th Cir. 1993); *Deaton v. Montgomery County,* 989 F.2d 885, 887 (6th Cir. 1993). Summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *LaPointe v. UAW, Local 600,* 8 F.3d 376, 378 (6th Cir. 1993). The moving party bears the initial burden of establishing an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett,* 477 U.S. 317, 323 (1986).

This court concludes that the defendants met their burden of establishing an absence of evidence to support McCracken's claim. *Celotex Corp.,* 477 U.S. at 323. Prison authorities may be sued for deliberate indifference to a serious medical need if the officials intentionally deny or delay access to medical care or intentionally interfere with the treatment or care that has been prescribed. *Estelle v. Gamble,* 429 U.S. 97, 104-05 (1976). The officials' conduct or lack of conduct must demonstrate a knowing indifference to serious medical needs. *See, e.g., Hicks v. Frey,* 992 F.2d 1450, 1454-57 (6th Cir. 1993).

The evidence does not show that the defendants were deliberately indifferent to McCracken's medical needs. When McCracken was booked into the county jail, the officials received McCracken's medication and

meticulously delivered the proper medication to her, at the proper times, for her Crohn's disease. When McCracken complained to the prison guards that she was dizzy, dehydrated and in pain due to her disease, the deputy on duty at the jail promptly transported her to the Coshocton Hospital emergency room for an evaluation. When McCracken did not agree with the diagnosis and treatment prescribed by the physician at Coshocton Hospital, McCracken was permitted to contact her mother, who called McCracken's regular doctor. Thereafter, it was arranged for McCracken to receive I.V. treatments at Bethesda Hospital in Zanesville, Ohio.

There is no merit to McCracken's principal complaint, that the prison officials purposely denied her the I.V. treatments at Bethesda until after a scheduled court appearance. The defendants responded, within a reasonable amount of time, to McCracken's complaints and to her request for specific medical treatment. The difference of opinion between McCracken and the first physician who examined her, or between McCracken and the prison officials regarding her proper diagnosis and treatment, does not support an Eighth Amendment claim. *Estelle,* 429 U.S. at 107; *Westlake v. Lucas,* 537 F.2d 857, 860-61 (6th Cir. 1976). Thus, the district court properly granted summary judgment in favor of the defendants.

Accordingly, the district court's order granting the defendants' motion for summary judgment is affirmed.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Karen McCracken,	:	
Plaintiff	:	Civil Action C-2-94-951
v.	:	Judge Smith
Coshocton County, et al.,	:	Magistrate Judge Abel
Defendants	:	

OPINION AND ORDER

Plaintiff Karen McCracken brings this action under 42 U.S. §1983 alleging that defendants Coshocton County and David Corbett, Coshocton County Sheriff, denied her proper medical treatment during her incarceration at the Coshocton County jail. This matter is before the Court on defendants' June 7, 1995 motion for summary judgment.

Background

The complaint alleges the following facts. In December 1992, plaintiff was arrested and incarcerated for five days in the Coshocton County jail. Complaint ¶5. Plaintiff suffers from Crohn's disease, a condition which causes several symptoms, including severe diarrhea. *Id.* ¶6. When the condition acts up, plaintiff suffers from severe dehydration if it is not properly treated. *Id.* ¶7. The condition did flare up while plaintiff was incarcerated, and she became severely dehydrated. *Id.* ¶8. Defendant Corbett's office and the jailers were aware of plaintiff's condition but denied her

medical treatment. *Id.* ¶9. Plaintiff's condition only improved when her mother took her to the hospital. *Id.* ¶10. Defendants placed plaintiff's health and life in danger by denying her medical treatment. *Id.* ¶11. Plaintiff claims that defendants' actions violated her rights under the Equal Protection and Due Process Clauses of the Fifth and Fourteenth Amendments. She seeks declaratory and injunctive relief, compensatory and punitive damages, and attorney fees.

Standard of Review

Summary judgment is governed by Rule 56(c) of the Federal Rules of Civil Procedure which provides:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

"[T]his standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248 (1986) (emphasis in original); *Kendall v. The Hoover Co.*, 751 F.2d 171, 174 (6th Cir. 1984).

Summary judgment will not lie if the dispute about a material fact is genuine; "that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 247-248. The purpose of the procedure is not to resolve factual issues, but to determine if there are genuine issues of

fact to be tried. *Lashlee v. Sumner*, 570 F.2d 107, 111 (6th Cir. 1978). Therefore, summary judgment will be granted "only where the moving party is entitled to judgment as a matter of law, where it is quite clear what the truth is, . . . [and where] no genuine issue remains for trial, . . . [for] the purpose of the rule is not to cut litigants off from their right of trial by jury if they really have issues to try." *Poller v. Columbia Broadcasting Systems. Inc.*, 368 U.S. 464, 467 (1962); *accord, County of Oakland v. City of Berkeley*, 742 F.2d 289, 297 (6th Cir. 1984).

In making this inquiry, the standard to be applied by the Court mirrors the standard for a directed verdict. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). *Anderson*, 477 U.S. at 250.

> The primary difference between the two motions is procedural: summary judgment motions are usually made before trial and decided on documentary evidence, while directed verdict motions are made at trial and decided on the evidence that has been admitted. *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 745, n. 11 (1983). In essence, though, the inquiry under each is the same: whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.

Accordingly, although summary judgment should be cautiously invoked, it is an integral part of the Federal Rules which are designed "to secure the just, speedy and inexpensive determination of every action." *Celotex*, 477 U.S. at 327 (quoting Fed. R. Civ. P. 1).

In a motion for summary judgment the moving party bears the "burden of showing the absence of a genuine issue as to any material fact, and for these purposes, the [evidence submitted] must be viewed in the light most favorable to the opposing party." *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970) (footnote omitted); *accord, Adams v. Union Carbide Corp.*, 737 F.2d 1453, 1455-56 (6th Cir. 1984), *cert. denied*, 469 U.S. 1062 (1985). Inferences to be drawn from the underlying facts contained in such materials must be considered in the light most favorable to the party opposing the motion. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962); *Watkins v. Northwestern Ohio Tractor Pullers Association, Inc.*, 630 F.2d 1155, 1158 (6th Cir. 1980). Additionally, "unexplained gaps" in materials submitted by the moving party, if pertinent to material issues of fact, justify denial of a motion for summary judgment. *Adickes*, 398 U.S. at 157-60; *Smith v. Hudson*, 600 F.2d 60, 65 (6th Cir. 1979), *cert. dismissed*, 444 U.S. 986 (1979).

If the moving party meets its burden and adequate time for discovery has been provided, summary judgment is appropriate if the opposing party fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial. *Celotex*, 477 U.S. at 322. The mere existence of a scintilla of evidence in support of the opposing party's position will be insufficient; there must be evidence on which the jury could reasonably find for the opposing party. *Anderson*, 477 U.S. at 251 (quoting *Improvement Co. v. Munson*, 14 Wall. 442, 448 (1872)). As is provided in Fed. R. Civ. P. 56(e):

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon

> the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

Thus, "a party cannot rest on the allegations contained in his . . . [pleadings] in opposition to a properly supported motion for summary judgment against him." *First National Bank of Arizona v. Cities Service Co.*, 391 U.S. 253, 259 (1968) (footnote omitted).

Analysis

The majority of the facts of this case are not in dispute. Plaintiff began her 5-day jail sentence on February 8, 1993. At this time, her condition had begun to flare up. As a result of her condition, it became necessary for plaintiff to be taken to the emergency room of the Coshocton County Memorial Hospital on February 10, 1993. She was diagnosed as having a urinary tract infection which plaintiff claims is a symptom of her disease. She requested emergency room staff to contact her personal physician, but they refused. When they still refused after repeated requests, plaintiff asked the sheriff's deputy to be returned to the jail.

Upon her return to jail, plaintiff called her mother who, in turn, called plaintiff's personal physician, a Dr. Carver. According to plaintiff, Dr. Carver arranged for her to go to Bethesda Memorial Hospital ("Bethesda") in Zanesville, Ohio for intravenous ("IV") fluid treatments. Plaintiff claims that jail officials would permit her to go to Bethesda only after she testified before the grand jury on February 12, 1993. By the time she testified, plaintiff was very weak, dehydrated,

and needed help standing and walking. After she testified, she went to Bethesda which denied her admission. She then returned to the jail and remained there one more night to finish out her sentence.

Plaintiff claims that defendants delayed her from receiving medical treatment in the form of the IV treatments until after she testified in front of the grand jury despite their knowledge that she was severely ill. Defendants have disputed that they intentionally delayed plaintiff's medical treatment or denied her from receiving treatment until after she testified.

Clearly, defendants were not deliberately indifferent to plaintiff's medical needs prior to her visit to Bethesda on February 12, 1993. Defendants allowed her to go to the emergency room and receive treatment there. Defs.' Mot. Summ.J., Exs. A-2 and A-3. Defendants also supplied plaintiff with prescribed medication and Tylenol. Defs.' Mot. Summ.J., Ex A-2. The only question is whether defendants delayed further medical treatment for plaintiff in deliberate indifference to her health and safety.

In response to plaintiff's allegation about a delay in treatment, defendants submit the affidavit of Sheriff David Corbett. Defendant Corbett states that he investigated into plaintiff's allegation and found that neither the court and jail records, the prosecuting attorney, the municipal court judge, nor the jail matron on duty reflected or issued an order that plaintiff be denied medical treatment until after she testified. David Corbett's July 27, 1995 Affidavit at ¶3. He also did not issue an order or take any other action to prevent plaintiff's release to the hospital until after she testified. Corbett Aff. at ¶5. He also states that he never took any action to deny or delay medical treatment to plaintiff and is not aware of anyone else who did so. *Id.* at ¶6.

Defendant Corbett also states that he was never contacted by plaintiff's physician, Dr. Carver, or anyone else regarding plaintiff's need for IV treatment. *Id.* at ¶7. As defendants point out, plaintiff does not state in her affidavit that Dr. Carver notified them of plaintiff's need to go to Bethesda to receive the IV treatments. Without knowledge of this need, defendants could not be deliberately indifferent to it.

Defendants also contend that plaintiff's condition was not as bleak as she would make out. Defendants point out that plaintiff's physical examination at Bethesda revealed "a healthy appearing middle aged female in no evident physical distress." Defs.' Mot. Summ.J., Ex. C. Bethesda also refused to admit plaintiff because "there was nothing that we could do for her in the hospital that could not be done as an outpatient and therefore there would be no justification for admitting her." *Id.*

While the Court recognizes that denying or delaying medical attention or treatment to a person in serious need of it constitutes an Eighth Amendment violation, the Court cannot say that, on the facts of this case, such a violation occurred. Accordingly, defendants' motion for summary judgment is well-taken.

Conclusion

For the reasons set out above, the Court HOLDS that defendants' June 7, 1995 motion for summary judgment (doc. #6) is meritorious; and, therefore, it is GRANTED. The Clerk of Court is DIRECTED to enter JUDGMENT for defendants. This action is hereby DISMISSED.

Supreme Court, U. S.
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No. 96-85

In The

Supreme Court of the United States

October Term, 1995

KAREN MCCRACKEN,

Petitioner,

v.

COSHOCTON COUNTY AND DAVID CORBETT

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION OF RESPONDENTS COSHOCTON COUNTY AND DAVID CORBETT

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BRIEF IN OPPOSITION OF RESPONDENTS COSHOCTON COUNTY AND DAVID CORBETT

Respondents Coshocton County and David Corbett respectfully request that this Court deny the Petition for a Writ of Certiorari seeking review of the decision of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is unpublished and is included in the appendix to petitioner's Petition at A-1.The opinion and order of the United States District Court for the Southern District of Ohio, Eastern Division is unpublished and is included in the appendix to petitioners' Petition at page A-4.

STATEMENT OF THE CASE

Petitioner commenced this action on September 30, 1994 under 42 U.S.C. §1983 claiming that respondents violated her constitutional rights by delaying medical treatment during her five-day incarceration at the Coshocton County Jail in February, 1993. (R.1: Complaint).

On June 7, 1995 respondents filed a Motion for Summary Judgment (R.6: Motion). Plaintiff filed her Memorandum Contra on June 29, 1995 (R.7: Memorandum Contra), to which respondents filed their Reply on July 31, 1995 (R.10: Reply). The District Court rendered its

Opinion and Order granting respondents' Motion for Summary Judgment on August 21, 1995 (R.21: Memorandum, Opinion and Order; Petition at A-4) and timely Notice of Appeal was filed on September 18, 1995 (R.13: Notice of Appeal).

On April 17, 1996 the United States Court of Appeals for the Sixth Circuit issued its decision affirming the District Court's Order granting respondents' Motion for Summary Judgment (Petition at A-1).

In discussing the facts of this case in her Statement of the Case (Petition at 3-5) petitioner chooses to ignore much of the evidence presented to the District Court. The facts of this case were succinctly set forth by the District Court as follows:

> The majority of the facts of this case are not in dispute. Plaintiff began her 5-day jail sentence on February 8, 1993. At this time, her condition had begun to flare up. As a result of her condition, it became necessary for plaintiff to be taken to the emergency room of the Coshocton County Memorial Hospital on February 10, 1993. She was diagnosed as having a urinary tract infection which plaintiff claims is a symptom of her disease. She requested emergency room staff to contact her personal physician, but they refused. When they still refused after repeated requests, plaintiff asked the sheriff's deputy to be returned to the jail.
>
> Upon her return to jail, plaintiff called her mother who, in turn, called plaintiff's personal physician, a Dr. Carver. According to plaintiff, Dr. Carver arranged for her to go to Bethesda Memorial Hospital ("Bethesda") in Zanesville,

Ohio for intravenous ("IV") fluid treatments. Plaintiff claims that jail officials would permit her to go to Bethesda only after she testified before the grand jury on February 12, 1993. By the time she testified, plaintiff was very weak, dehydrated, and needed help standing and walking. After she testified, she went to Bethesda which denied her admission. She then returned to the jail and remained there one more night to finish out her sentence.

Plaintiff claims that defendants delayed her from receiving medical treatment in the form of the IV treatments until after she testified in front of the grand jury despite their knowledge that she was severely ill. Defendants have disputed that they intentionally delayed plaintiff's medical treatment or denied her from receiving treatment until after she testified. Clearly, defendants were not deliberately indifferent to plaintiff's medical needs prior to her visit to Bethesda on February 12, 1993. Defendants allowed her to go to the emergency room and receive treatment there. Defs.' Mot. Summ. J., Exs. A-2 and A-3. Defendants also supplied plaintiff with prescribed medication and Tylenol. Defs.' Mot. Summ. J., Ex A-2. The only question is whether defendants delayed further medical treatment for plaintiff in deliberate indifference to her health and safety.

In response to plaintiff's allegation about a delay in treatment, defendants submit the affidavit of Sheriff David Corbett. Defendant Corbett states that he investigated into plaintiff's allegation and found that neither the court and jail records, the prosecuting attorney, the municipal court judge, nor the jail matron on duty

reflected or issued an order that plaintiff be denied medical treatment until after she testified. David Corbett's July 27, 1995 Affidavit at ¶3. He also did not issue an order or take any other action to prevent plaintiff's release to the hospital until after she testified. Corbett Aff. at ¶5. He also states that he never took any action to deny or delay medical treatment to plaintiff and is not aware of anyone else who did so. *Id.* at ¶6.

Defendant Corbett also states that he was never contacted by plaintiff's physician, Dr. Carver, or anyone else regarding plaintiff's need for IV treatment. *Id.* at ¶7. As defendants point out, plaintiff does not state in her affidavit that Dr. Carver notified them of plaintiff's need to go to Bethesda to receive the IV treatments. Without knowledge of this need, defendants could not be deliberately indifferent to it.

Defendants also contend that plaintiff's condition was not as bleak as she would make out. Defendants point out that plaintiff's physical examination at Bethesda revealed "a healthy appearing middle-aged female in no evident physical distress." Defs.' Mot. Summ. J., Ex. C. Bethesda also refused to admit plaintiff because "there was nothing that we could do for her in the hospital that could not be done as an outpatient and therefore there would be no justification for admitting her." *Id.*

(R. 11: Memorandum, Opinion and Order at 5-7; Petition at A-8-10.)

SUMMARY OF ARGUMENT

While incarcerated in the Coshocton County Jail, respondents provided medical treatment to petitioner including examination, diagnosis and treatment at a hospital and all prescribed medications. There is no evidence in the record or even in petitioner's own Affidavit (R.7: Memorandum Contra, Exhibit B) that respondents were ever advised of any additional or alternate necessary medical treatment. Respondents were not indifferent to petitioner's serious medical needs and the District Court properly granted summary judgment for respondents.

REASONS FOR DENYING THE PETITION

I. THE COURT OF APPEALS PROPERLY AFFIRMED SUMMARY JUDGMENT ON BEHALF OF RESPONDENTS

In *Estelle v. Gamble*, 429 U.S. 97 (1976), this Court held that the deliberate indifference by prison personnel to an inmate's serious illness or injury constitutes cruel and unusual punishment so as to violate the Eighth Amendment to the United States Constitution. At the same time, however, this Court recognized that not every claim by a prisoner of inadequate medical treatment states a constitutional violation, and that negligent treatment of a prisoner's medical condition by prison personnel fails to state a cognizable claim for relief under federal law. 429 U.S. at 105-106.

The Sixth Circuit Court of Appeals has also held that an inmate's allegation of negligent treatment of a medical condition fails to state a cognizable federal claim. In

Westlake v. Lucas, 537 F. 2d 857 (6th Cir. 1976), the court, after recognizing that fundamental fairness and due process mandate that medical care be provided to one who is incarcerated and may be suffering from serious injury, observed that:

> This is not to say that every request for medical attention must be heeded nor that courts are to engage in the process of second-guessing in every case the adequacy of medical care that the state provides.

Id. at 860, quoting *Fitzke v. Shappell*, 468 F. 2d 1072, 1076 (6th Cir. 1972).

In *Westlake*, the Sixth Circuit drew an important distinction between allegations of "complete denial of medical care," which state a constitutional violation, and the allegations of "inadequate medical treatment," which do not.

> We distinguish between cases where the complaint alleges a complete denial of medical care and those cases where the claim is that a prisoner received inadequate medical treatment. *See Fitzke v. Shappell, supra* [468 F. 2d 1072 (6th Cir. 1972)] at 1076, n.4. *See also Jones v. Lockhart, supra* [484 F. 2d 1192 (8th Cir. 1973)] at 1194; *Corby v. Conboy, supra* [457 F. 2d 251 (2d Cir. 1972)] at 254. Where a prisoner has received some medical attention and the dispute is over the adequacy of the treatment, federal courts are generally reluctant to second guess medical judgment and to constitutionalize claims which sound in state tort law. *See*, e.g. *Pinon v.*

Wisconsin, 368 F. Supp. 608 (E.D. Wis. 1973). *But cf. Fitzke v. Shappell, supra* at 1076-77 n.7.

537 F. 2d 860 n.5.

In her Complaint (R.1: Complaint at ¶¶9 and 11), petitioner alleged a complete denial of medical care. However, from the documents attached to respondent's Motion for Summary Judgment (R.6: Motion, exhibits), some of which were supplied by the petitioner herself, it is beyond dispute that petitioner did receive medical treatment. Petitioner's only possible complaint in this regard amounts to a challenge to the adequacy of that treatment. Petitioner, at best, was, therefore, asserting a medical negligence action which cannot be the basis for a federal civil rights action.

The law is clear that a mere difference in opinion between prison officials and a prisoner over the course of the prisoner's medical treatment does not give rise to a constitutional right or sustain a claim for relief under 42 U.S.C. §1983. *McCracken v. Jones*, 562 F. 2d 22 (10th Cir. 1977); *Massey v. Hutto*, 545 F. 2d 45 (8th Cir. 1976); *McKinney v. People of State of Calif.*, 427 F. 2d 1660 (9th Cir. 1970) *cert. denied*, 400 U.S. 831 (1970); *United States v. Ragen*, 323 F. 2d 410 (7th Cir. 1963).

> State prison officials must of necessity be vested with a wide degree of discretion in determining the nature and character of medical treatment to be afforded state prisoners. It is not the function of federal courts to interfere with the conduct of state officials in carrying out such duties under state law.

United States v. Ragen, 323 F. 2d at 412. *See also, Westlake v. Lucas*, 537 F. 2d 857 (6th Cir. 1976).

Given this wide degree of discretion vested in state prison officials, "[i]t is established that claims of inadequate medical treatment which reflect mere disagreement with prison authorities over proper medical treatment do not state a claim of constitutional magnitude." *Massey v. Hutto*, 545 F. 2d at 46.

For the first time in her Memorandum Contra (R. 7: Memorandum Contra), while admitting that she did receive medical treatment while incarcerated, petitioner argues that additional medical treatment was delayed. Indeed, in her Petition before this Court, petitioner asserts, at p. 4, that she "was not allowed to go and receive the treatment until after [she] testified in front of the grand jury on February 12." But nowhere – not even in petitioner's own Affidavit – (R.7: Memorandum Contra, exhibit B) is there even an allegation that petitioner's physician, Dr. Craver, or any other medical professional ever advised respondents of this alleged need for IV treatment. In fact, in her own Affidavit (R.7: Memorandum Contra, Exhibit B), petitioner does not even allege that *she* told any jail personnel that she needed this treatment. What petitioner ignores is that the Affidavit of Respondent Sheriff Corbett affirmatively states:

> 5. I did not issue an order or take any other action to prevent Plaintiff's release to the hospital until after she testified before the grand jury nor am I aware of anyone else issuing such an order or taking such action.
>
> 6. I have never taken any action whatsoever to deny or delay medical treatment to Plaintiff nor am I aware of anyone else ever doing so.

> 7. I was never contacted by Plaintiff's physician, Dr. Carver, concerning her alleged need for IV treatment, nor was I ever aware, from any other source, of any such need.
>
> (R.10: Reply, Exhibit A)

These are not inadmissible statements of belief but, rather, admissible, affirmative statements of what the Sheriff did or did not do and did or did not know.

While incarcerated, petitioner was taken to the hospital for examination and treatment where she was diagnosed with a urinary tract infection. Even if petitioner was dissatisfied with this treatment, and even if the diagnosis was ultimately determined to be erroneous, this does not constitute deliberate indifference to serious medical needs. Further, respondents certainly cannot be held liable for delaying treatment that they had no knowledge was necessary. To the contrary, respondents sought out medical care for petitioner and provided all care that was prescribed or recommended.

CONCLUSION

Petitioner has failed to show any conflict between the decision of the Court of Appeals for the Sixth Circuit and prior decisions of this Court or of any other federal court. Petitioner has failed to show any other basis for this Court to hear this case. The decision of the Court of Appeals for the Sixth Circuit is consistent with applicable law and does not warrant review on any grounds.

Respondents respectfully request that petitioner's Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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No. 96-85

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1995

KAREN McCRACKEN,

Petitioner,

v.

COSHOCTON COUNTY and DAVID CORBETT,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

Petitioner Karen McCracken respectfully requests that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered in the above entitled case on April 17, 1996. Respondents' arguments highlight why this Court should issue a writ of certiorari on the question presented in this case.

REASONS FOR GRANTING THIS PETITION FOR CERTIORARI

The Respondents contend that a Writ of Certiorari should not be granted in this matter because the Petitioner allegedly "chooses to ignore much of the evidence presented to the District Court." *See* Respondents' Brief in Opposition at 2. Specifically, the Respondents assert that the Petitioner has ignored the affidavit of Respondent Sheriff Corbett. *Id.* at 8.[1] However, with their argument, the Respondents are making the same mistake made by the courts below: mistakenly assuming that Rule 56 of the Federal Rules of Civil Procedure requires the Petitioner to *disprove* the Respondents' evidence in order to maintain her action in the face of a motion for summary judgment.

In fact, Rule 56 states that summary judgment should be granted *only* if the record evidence shows that there is "*no* genuine issue as to *any* material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P., Rule 56(c) (emphasis added). Indeed, this Court has repeatedly rejected the Respondents' argument that the nonmoving party is required to disprove the moving party's evidence in order to survive a motion for summary judgment:

> [i]t is true that the issue of material fact required by Rule 56(c) to be present to entitle a party to proceed to trial *is not required to be resolved conclusively in favor of the party asserting its existence*; rather, all that is required is that sufficient evidence supporting the claimed factual dispute be shown to require a jury or

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[1] In his affidavit, Sheriff Corbett provides self-serving testimony that he was not aware of an order to delay Petitioner's medical treatment until after her Grand Jury testimony, nor was he contacted concerning her need for medical treatment. *See* Respondents' Brief in Opposition at 8.

> judge to resolve the parties' differing versions of the truth at trial.

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986) (emphasis added) (quoting *First National Bank of Arizona v. Cities Service Co.*, 391 U.S. 253, 288-89 (1968)). As applied to this matter, *Anderson* specifically holds that to have been entitled to proceed to trial in the face of Respondents' motion for summary judgment, the Petitioner need not have been able to "resolve conclusively" that Respondent Corbett's affidavit was untruthful. Instead, *Anderson* specifically holds that to have been entitled to proceed to trial, the Petitioner was only required to produce "sufficient evidence supporting the claimed factual dispute" such that a trial is needed to resolve the differing versions of the truth.

In the trial court, the Petitioner provided ample evidence of the claimed factual dispute: that the Respondents were deliberately indifferent to her serious medical needs and delayed her medical treatment until after she testified before a Grand Jury.[2] According to the District Court opinion, by the time she testified before the Grand Jury, Petitioner "was very weak, dehydrated, and needed help standing and walking." *See* District Court Opinion, Petition Appendix at A-8. Further, according to the Bethesda Emergency Room Report, "it was clear that the patient was sick," as the Petitioner had cramping pain and diarrhea four times a day, had eaten only a couple of crackers and had lost some weight. *See* Record at 70. Therefore, there was ample record evidence illustrating the degree of the Petitioner's illness on Friday, February 12, such that a reasonable jury could conclude that the Respondents

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[2]As explained in the Petition, there was no dispute in the lower courts that prison officials violate a prisoner's Due Process and Eighth Amendment rights under 42 U.S.C. § 1983 by intentionally delaying medical treatment out of a deliberate indifference to a prisoner's serious medical needs. *See* Petition at 6; *Estelle v. Gamble*, 429 U.S. 97 (1976).

had knowledge of the Petitioner's medical needs before she was scheduled to testify in front of the Grand Jury yet were deliberately indifferent to that knowledge by delaying her medical treatment until after she testified.

The Respondents argue to this Court that a Writ of Certiorari should not be granted in this matter because the Petitioner 'ignored' Respondent Corbett's affidavit. Further, the courts below relied solely on the evidence contained in that affidavit in concluding that the Respondents were entitled to summary judgment. However, based on this Court's opinion in *Anderson v. Liberty Lobby*, the Petitioner states that Rule 56 does not require her to *disprove* Respondent Corbett's affidavit in order to maintain her action in the face of the Respondents' motion for summary judgment. Therefore, the Petitioner respectfully requests that this Court review the lower courts' opinions in this case in order to remind those courts as to the proper burden that must be met by a party moving for a summary judgment as well as to vindicate the Petitioner's right to have her claim heard by a jury of her fellow citizens.

CONCLUSION

For all of the reasons stated herein and in the Petition, the Petitioner respectfully contends that the Sixth Circuit has sanctioned a departure from the accepted and usual course of judicial proceedings by the lower court so as to call for an exercise of this Court's supervisory power. As a consequence, the Petitioner respectfully contends that this petition should be granted or, alternatively, that the decision below should be summarily reversed.

Respectfully Submitted,

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